

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

BSD, INC., a California corporation; 21st
CENTURY GROUP, INC., a California
corporation; and YOUSTINE, INC., a
California corporation,

Plaintiffs,

vs.

EQUILON ENTERPRISES, LLC, a Delaware
limited liability company; ANABI OIL
CORPORATION, a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

AND RELATED COUNTER CLAIMS

Case No: C 10-5223 SBA

**ORDER DENYING MOTION
TO WITHDRAW**

Docket 107.

The parties are presently before the Court on Bleau Fox, A Professional Law Corporation's ("Bleau Fox") motion to withdraw as counsel of record for Plaintiff, Counter-Claimant, and Counter-Defendant Youstine, Inc. ("Youstine"). Dkt. 107. Equilon Enterprises, LLC, filed a non-opposition to the motion. Dkt. 108. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby DENIES Bleau Fox's motion to withdraw without prejudice, for the reasons stated below. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

I. DISCUSSION

The Court's Civil Local Rules authorize an attorney to withdraw as counsel of record if: (1) written notice has been given reasonably in advance to the client and all other parties in the action; and (2) the attorney obtains leave of Court. Civ. L.R. 11-5(a); see Darby v. City of Torrance, 810 F.Supp. 275, 276 (C.D. Cal. 1992) (an attorney representing a client

1 may not withdraw except by leave of court). In addition, the Local Rules provide that when
2 withdrawal by an attorney from an action is not accompanied by simultaneous appearance
3 of substitute counsel or agreement of the party to appear pro se, leave to withdraw may be
4 subject to the condition that papers may continue to be served on counsel for forwarding
5 purposes, unless and until the client appears by other counsel or pro se. Civ. L.R. 11-5(b).

6 In this district, the conduct of counsel, including the withdrawal of counsel, is
7 governed by the standards of professional conduct required of members of the State Bar of
8 California. Civ. L.R. 11-4(a)(1); see Nehad v. Mukasey, 535 F.3d 962, 970 (9th Cir. 2008)
9 (applying California Rules of Professional Conduct to attorney withdrawal). California
10 Rule of Professional Conduct 3-700(C)(1)(d) allows withdrawal where the client "renders it
11 unreasonably difficult for [counsel] to carry out the employment effectively." However,
12 before counsel can withdraw, counsel must comply with California Rule of Professional
13 Conduct 3-700(A)(2), which provides that counsel shall not withdraw from employment
14 until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to
15 the rights of the client, including giving due notice to the client, allowing time for
16 employment of other counsel, complying with rule 3-700(D) (regarding papers), and
17 complying with applicable laws and rules. See El Hage v. U.S. Sec. Assocs., Inc., 2007
18 WL 4328809, at *1 (N.D. Cal. 2007). The decision to permit counsel to withdraw is within
19 the sound discretion of the trial court. See United States v. Carter, 560 F.3d 1107, 1113
20 (9th Cir. 2009).

21 Courts consider several factors when considering a motion for withdrawal,
22 including: (1) the reasons counsel seeks to withdraw; (2) the possible prejudice that
23 withdrawal may cause to other litigants; (3) the harm that withdrawal might cause to the
24 administration of justice; and (4) the extent to which withdrawal will delay resolution of the
25 case. Deal v. Countrywide Home Loans, 2010 WL 3702459, at *2 (N.D. Cal. 2010)
26 (Armstrong, J.)

27 Here, Bleau Fox seeks to withdraw on the ground that the firm "can no longer
28 properly or adequately defend and prosecute this case on behalf of Youstine and diligently

1 protect the best interests of Youstine" because of the "significant deterioration of the
2 relationship and differences of opinion between Counsel and Youstine, and Youstine's
3 failure to cooperate with Counsel in this litigation." Bleau Fox's Mtn. at 5. In support of its
4 motion to withdraw, Bleau Fox submitted the declarations of Thomas Bleau ("Bleau") and
5 Martin Fox ("Fox"), partners with Bleau Fox. Bleau Decl., Dkt. 107-1; Fox Decl., Dkt.
6 107-2. As for the basis for withdrawal, counsel attest that the relationship between
7 Youstine and Bleau Fox has significantly deteriorated to the point where "it is now
8 impossible for [the firm] to continue to represent Youstine and to take the necessary
9 litigation strategies and steps to continue to diligently pursue and protect [Youstine's] best
10 interests." Bleau Decl. ¶ 4; Fox Decl. ¶ 3. According to counsel, they have "no choice but
11 to ask the Court's permission to withdraw" as the firm "can no longer proceed as it deem[s]
12 necessary in this case." Bleau Decl. ¶ 5; Fox Decl. ¶ 4.

13 The Court finds that Bleau Fox has failed to demonstrate that withdrawal is
14 appropriate under the California Rules of Professional Conduct. While Bleau Fox provided
15 notice reasonably in advance to Youstine and all parties that have appeared in this case of
16 its intention to withdraw as counsel of record for Youstine in compliance with the
17 requirements of Civil Local Rule 11-5(a), see Bleau Decl. ¶ 6,¹ it has failed to demonstrate
18 the need/reasons for withdrawal. It has also failed to show that it has taken reasonable
19 steps to avoid reasonably foreseeable prejudice to the rights of its client. Specifically,
20 Bleau Fox has not submitted evidence indicating that its client was given a detailed
21 explanation of the reasons for withdrawal and/or the consequences of withdrawal. For
22 example, there is no indication that counsel informed their corporate client that it must
23 retain new counsel in order to continue to prosecute this action insofar as corporations can
24 only appear through licensed counsel. See Civ. L.R. 3-9(b); Rowland v. California Men's
25 Colony, Unit II Men's Advisory Council, 506 U.S. 194, 202, (1993); D-Beam Ltd. P'ship v.

26
27 ¹ The Court notes that all the parties that have appeared in this matter were notified
28 of Bleau Fox's intent to withdraw as counsel of record for Youstine when Bleau Fox e-filed
its motion to withdraw.

1 Roller Derby Skates, Inc., 366 F.3d 972, 973-974 (9th Cir. 2004). When a corporation fails
2 to retain counsel to represent it in an action, its answer may be stricken and a default
3 judgment entered against it. Employee Painters' Trust v. Ethan Enterprises, Inc., 480 F.3d
4 993 (9th Cir. 2007); see e.g., Galtieri-Carlson v. Victoria M. Morton Enters., Inc., 2010
5 WL 3386473, *3 (E.D. Cal. 2010) (sanctioning corporate defendants by striking their
6 answer when they failed to retain alternate counsel after the withdrawal of their original
7 counsel).

8 In addition, Bleau Fox has failed to adequately explain how Youstine's conduct has
9 rendered it unreasonably difficult for Bleau Fox to carry out the employment effectively.
10 In support of its motion to withdraw, Bleau Fox did not articulate with sufficient specificity
11 the reasons it seeks to withdraw. Rather, Bleau Fox simply states that the relationship
12 between Youstine and the law firm "has significantly deteriorated" to the point that it is
13 "impossible" for the firm to "take the necessary litigation strategies and steps to continue to
14 diligently pursue and protect [Youstine's] best interests." Bleau ¶ 4; Fox Decl. ¶ 3. It
15 further states that the firm "can no longer properly or adequately defend and prosecute this
16 case on behalf of Youstine and diligently protect the best interests of Youstine" because of
17 the "significant deterioration of the relationship and differences of opinion between
18 Counsel and Youstine, and Youstine's failure to cooperate with Counsel in this litigation."
19 Bleau Fox's Mtn. at 5.

20 Absent a more specific explanation of the conduct that Youstine has engaged in, it is
21 impossible for the Court to determine whether Youstine has been sufficiently informed of
22 the actions it has taken that make it difficult for Bleau Fox to carry out the employment
23 effectively and has failed to respond to Bleau Fox's concerns. While the Court recognizes
24 that Bleau Fox is concerned, and rightly so, about disclosing attorney-client privileged
25 information, it nonetheless must provide the Court with an adequate factual basis for its
26 request to withdraw as counsel of record for Youstine. This requires Bleau Fox to provide
27 the Court with a general explanation of what Youstine has done that has caused the
28 "significant deterioration" of the attorney client relationship, including a description of the

1 nature of the "differences of opinion" and examples of Youstine's failure to cooperate, e.g.,
2 failure to communicate, refusal to follow advice.

3 In sum, the Court concludes that Bleau Fox has failed to demonstrate compliance
4 with the California Rules of Professional Conduct. Bleau Fox has not adequately shown
5 that they have taken all reasonable steps to avoid reasonably foreseeable prejudice to the
6 rights of their client. Nor has the firm adequately explained how Youstine's conduct has
7 rendered it unreasonably difficult for it to carry out the employment effectively.
8 Accordingly, Bleau Fox's motion to withdraw is DENIED without prejudice to the filing of
9 a renewed motion to withdraw that addresses the deficiencies identified in this Order. In
10 the event that Bleau Fox determines that it cannot adequately explain how Youstine's
11 conduct has rendered it unreasonably difficult for it to carry out the employment effectively
12 without revealing attorney-client privileged matters, Bleau Fox may request to file its
13 motion under seal or an in camera hearing.

14 **II. CONCLUSION**

15 For the reasons stated above, IT IS HEREBY ORDERED THAT:

16 1. Bleau Fox's motion to withdraw as counsel of record for Youstine is DENIED
17 without prejudice.

18 2. This Order terminates Docket 107.

19 IT IS SO ORDERED.

20 Dated: 3/11/13


21 SAUNDRA BROWN ARMSTRONG
22 United States District Judge
23
24
25
26
27
28